



OPERATIONAL BULLETIN:

TITLE: COVID-19 Response - Foreign Nationals arriving from the United States who make a claim for refugee protection at airports, marine ports and between ports of entry.

| | | | |
|---|------------------------|--|--------------------------------------|
| Date of Issue: April 21, 2020 | Mode(s): All | Target Audience: All officers administering and enforcing IRPA | Area of Interest: National |
|---|------------------------|--|--------------------------------------|

Details:

These instructions are specific to direct back authorities for foreign nationals arriving from the United States who make a claim for refugee protection at designated air and marine ports of entry and for those who enter Canada between ports of entry.

This Order in Council (colloquially referred to as OIC-11), entitled Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States), No.3, is made pursuant to section 58 of the Quarantine Act.

This Order in Council has effect for the period beginning on April 22, 2020 (00:01) and ending on May 21, 2020.

The Order repeals and replaces the Order in Council P.C. 2020-0185 entitled Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States) (referred to as OIC-9), which came into force on March 26, 2020.

Background

In order to enhance the authority of the Minister of Public Safety and Emergency Preparedness to respond to emergency situations that temporarily impact the border, a new provision for direct back under paragraph 41(d) of the IRPR has been enacted. This amendment enables an officer to direct back a foreign national prohibited pursuant to an emergency order or regulation made under the *Quarantine Act* or the *Emergencies Act*.

OIC 11 creates exceptions to the general prohibition on entering Canada for the purpose of making a claim for refugee protection. More specifically, the new OIC provides that a foreign national is prohibited from entering Canada for the purpose of making a claim for refugee protection unless the foreign national:

- seeks to enter Canada at a land and rail port of entry designated by the Minister of Public Safety and Emergency Preparedness under section 26 of the Immigration and Refugee Protection Regulations; and
 - is a person referred to in section 159.2, 159.5 or 159.6 of the Immigration and Refugee Protection Regulations; or
 - is a citizen of the United States;
- seeks to enter Canada other than at a land or rail port of entry and is a person who is a citizen of the United States, a stateless habitual resident of the United States or an unaccompanied, unmarried minor without a parent or legal guardian in the US; or
- is a person whose presence in Canada is determined by the Minister of Public Safety and Emergency Preparedness or the Minister of Citizenship and Immigration to be in the national or public interest, while recognizing the paramount public health interests of Canada and Canadians.
 - More specifically, the Ministers exempt the following persons from the application of the OIC:
 - Foreign Nationals who make a claim for refugee protection at an air or marine port of entry and cannot be immediately directed back to the U.S..
 - Foreign Nationals who may be subject to the death penalty in any country.

Please refer to the notification process below for further case processing instructions.

Actions required by officers and Minister's Delegates (MDs) administering and enforcing the IRPA:

For all direct backs of foreign nationals making a claim for refugee protection at a designated POE (air or marine mode) or in-between the POEs, officers will be responsible to initiate and complete the following:

- Conduct queries in all applicable systems per existing procedures;
- Exam and Ref-Clm creation for quick intake in the Global Case Management System (GCMS);
- Collection of biometrics;
- BSF 505 – Direction to Return to USA and the officer will select “no officer is able to complete the examination” on the form.
- Update the direct back screen in GCMS selecting the option “R41(d) – Emerg/Quarant Act” ;
- Notice to Transporter (BSF 502), as applicable;

- Notification of the direct-back to the USCBP using established local procedures;
- Detailed notes in the examination tab of GCMS; notes must indicate the POE or irregular crossing of arrival. This will allow the officers responsible for the resumption of processing to understand what method of processing applies. Ports of Entry must maintain a list of all direct backs; the list should reflect the information in the Direct Back screen in GCMS and include the UCI, client's status in the U.S., name(s) and current contact information (telephone number and/or email address) for each claimant.

Exception: A direct back should not be issued to FNs who are symptomatic and who arrive from the U.S. via commercial or public conveyance (air or marine mode). Those individuals should be directed to isolate and/or referred to PHAC (depending on the severity of their symptoms and whether there are concerns about their ability to isolate themselves). This does not apply to FNs who arrive from the U.S. in a personal conveyance (i.e., would not pose a risk to other travellers) - they can be directed back to the U.S.

Foreign Nationals who are able to enter to make a refugee claim as per subsection 5(1) or 5(2) of the OIC, can enter even if they are symptomatic and will need to be referred to the PHAC Quarantine officers regardless of mode or location of entry.

Claims for refugee protection will be subject to the following intake process:

1. Determine if the foreign national is symptomatic or asymptomatic as per the following instructions:
 - COVID-19 – Enhanced Border Measures in Support of Mandatory Quarantine (asymptomatic travellers) and Isolation (symptomatic travellers) (All Modes)
2. Perform Secondary Examination
 - Determine if they meet an exemption to the OIC and are permitted to make a claim;
 - Conduct queries in all applicable systems per existing procedures;
 - Initiate Refugee Claim in GCMS;
 - Collect biometrics;
 - Conduct a Preliminary Risk Assessment in order to assess eligibility and once the eligibility assessment is made the following outcomes will occur:

Claim assessed - Low Risk Case:

- i. The processing of FNs seeking entry from the U.S. who make a claim

- for refugee protection and are assessed to be 'low risk' and appear to meet an exemption or exception to the STCA.
- ii. Once the acknowledgement of claim process is completed, the claimant is permitted entry for further examination to complete the refugee intake processing (BSF536).

Claim assessed - High Risk/Complex Case:

- i. Completion by CBSA at the POE or other CBSA location once the acknowledgement of claim process is completed in consideration of appropriate conditions to ensure compliance;
- ii. Arrest and/or detention (A55) considerations are to be made using the Temporary Measures to Guide Decisions to Detain and Consideration of Alternatives to Detention.

Note: POE's are responsible for the resumption of claim processing as per regional procedures/processing models. Should a claimant request processing at another CBSA location, it is the responsibility of the initial POE to coordinate the resumption of processing with the claimants preferred processing location.

Should a POE decide to complete the refugee intake process at the time of arrival, all protocols to ensure the health and safety of officers and claimants must followed.

For claims assessed to be ineligible, removal orders will come into force as follows:

- i. **101(1)(e) STCA:** immediately [U.S. Removal - Air Mode R159.4(2)];
- ii. **Other grounds of ineligibility - non-STCA:** seven (7) days;
- iii. **101(1)(c.1):** seven (7) days with an expedited PRRA within 30 days by IRCC;
- iv. **101(1)(d):** seven (7) days with an expedited risk assessment for *non-refoulement* within 30 days; and
- v. **101(1)(f) cases:** suspend eligibility before referral to Refugee Protection Division to wait the outcome of an admissibility hearing or criminal court proceeding in Canada.

Note: Foreign Nationals determined ineligible under the STCA shall be ordered removed and returned to the U.S. immediately as per ss.48(2) of *IRPA*.

Post Claim Processing Procedures

Foreign Nationals who are permitted to make a claim for refugee protection in Canada while the OIC is in effect are subject to the same requirements as all other travellers as described in OIC 10. Officers are required to follow the process as

described at the following link:

[COVID-19 – Enhanced Border Measures in Support of Mandatory Quarantine \(asymptomatic travellers\) and Isolation \(symptomatic travellers\) \(All Modes\)](#)

Transfer to Receiving Organizations

Upon completion of port of entry processing, should an individual require transportation and/or accommodations the following departments should be contacted based on whether the individual(s) are asymptomatic or symptomatic.

Asymptomatic Travellers - Immigration, Refugees and Citizenship Canada

Symptomatic Travellers - Public Health Agency of Canada

PHAC Central Notification System
1-833-615-2384
phac.cns-snc.aspc@canada.ca

Notification Process

POEs are to notify CBSA Case Management of all foreign nationals who have made a claim for refugee protection who are directed back to the U.S. or who are allowed into Canada as they meet an exception under the Quarantine Act and the OIC. Case Management can be notified via email with the following subject line: "COVID-19 Response – asylum claimant UCI:11-XXXX-XXXX". The email should also indicate whether the claimants current contact information (telephone number, address and/or email address) is on file for each claimant.

The above is in addition to any established regional notification processes.

Person(s) charged or convicted of an offence that is punishable by the death penalty

POEs must notify the Border Operations Centre immediately and prior to any decision or action is taken on a foreign national who has been charged with or convicted of an offence that is punishable by the death penalty, in the US or another country. The burden of proof is on the claimant to prove that they would be subject to the death penalty.

Return date for the direct back

Under general circumstances, direct backs normally include a specific date and time for the foreign national to return to the POE for further processing. For the duration of COVID-19 response, officers are required to provide the [Asylum handout COVID19](#) to all foreign nationals seeking refugee protection who are directed back. Officers will instruct all refugee claimants directed back to refer to the [CBSA website](#) for up to date information on when they should return to Canada. It is important that refugee claimants directed back are clearly counselled that this does not mean that their refugee claim will not be heard but rather that it is only delayed until such time as the OIC is lifted. Once the OIC has been lifted, arrangements will be made for the resumption of the refugee claim examination.

For greater clarity, these regulatory amendments do not impact any of the currently available recourse mechanisms with respect to immigration enforcement. They also do not impact individuals already granted protected person status under subsection 95(2) of the IRPA and seeking to re-enter Canada.

U.S. Interceptions and/or Returns to Canada

All persons seeking to make a claim for asylum in the U.S. and intercepted seeking entry at a place other than a POE, or entering at a U.S. POE, will be returned to the closest CBSA port office. The CBSA port of entry must accept the return of the foreign national; a case-by-case assessment by an officer should be completed and all available officer options can be considered when accepting the return of the person from U.S. authorities.

Once the border measures between Canada and the U.S. are lifted, the individual is to be contacted by U.S. authorities and advised to return to the U.S for further processing.

Additional Information:

- Arrest and/or detention (A55) considerations are to be made using the [Temporary Measures to Guide Decisions to Detain and Consideration of Alternatives to Detention](#)
- For further instructions on symptomatic or asymptomatic foreign nationals, please refer to the shift briefing [Restricting the non-essential travel to Canada of U.S. citizens and other foreign nationals arriving from the United States by land, rail, ferry and maritime](#)
- Contact information for Public Health Agency of Canada Quarantine Operations Centres can be found in Appendix B (Quarantine Operations Centres) of [Enforcement Manual 4 \(Port of Entry Examination\)](#).
- Additional guidance on liaising with the Public Health Agency of Canada is found in the [People Processing Manual, Part 8, Chapter 5.2](#)
- Additional guidance on POE processing can be found in ENF4 manual
- Additional guidance on writing A44(1) reports and Minister's Delegate review

- under A44(2) can be found in [ENF5](#) and [ENF6](#) manual, respectively.
- [Operational Bulletin: PRG-2015-34](#) - Transportation of Non-detained Persons in Agency Vehicles while Administering CBSA Program Legislation

Regional Management:

Regional supervisors and managers will ensure that the above instructions are implemented immediately, and will be responsible for regional best practices and for conducting quality assurance.

Contact Information:

Any questions regarding this bulletin should be directed to the following email address:

Border Services Officers: If you have any questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the Traveller Operations Division's generic inbox:

Approved by:

John Ommanney, Director General
Travellers Branch

Christian Lorenz, Director General
Intelligence and Enforcement Branch

Effective Date:

Updated:

Additional bulletins:



OPERATIONAL BULLETIN: OBO-2020-032

TITLE: COVID-19 Response - Foreign Nationals arriving from the United States who make a claim for refugee protection at airports, marine ports and between ports of entry.

| | | | |
|---|------------------------|--|--------------------------------------|
| Date of Issue: April 21, 2020 | Mode(s): All | Target Audience: All officers administering and enforcing IRPA | Area of Interest: National |
|---|------------------------|--|--------------------------------------|

Details:

These instructions are specific to direct back authorities for foreign nationals arriving from the United States who make a claim for refugee protection at designated air and marine ports of entry and for those who enter Canada between ports of entry.

The new Order in Council (colloquially referred to as OIC-16), entitled Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States), has been made pursuant to section 58 of the Quarantine Act.

This Order in Council has effect for the period beginning on June 19, 2020 (23:59:59 p.m.) and ending on July 21, 2020 (23:59:59 p.m.).

The Order repeals and replaces the Order in Council P.C. 2020-263 (OIC14).

This new Order in Council (OIC16) replicates the same provisions listed in OIC14 in regards to who can make a claim for refugee protection.

Background

In order to enhance the authority of the Minister of Public Safety and Emergency Preparedness to respond to emergency situations that temporarily impact the border, a new provision for direct back under paragraph 41(d) of the IRPR has been enacted. This amendment enables an officer to direct back a foreign national prohibited pursuant to an emergency order or regulation made under the *Quarantine Act* or the *Emergencies Act*.

OIC 16 creates exceptions to the general prohibition on entering Canada for the purpose of making a claim for refugee protection. More specifically, the new OIC provides that a foreign national is prohibited from entering Canada for the purpose of making a claim for refugee protection unless the foreign national:

- seeks to enter Canada at a land and rail port of entry designated by the Minister of Public Safety and Emergency Preparedness under section 26 of the Immigration and Refugee Protection Regulations; and
 - is a person referred to in section 159.2, 159.5 or 159.6 of the Immigration and Refugee Protection Regulations; or
 - is a citizen of the United States;
- seeks to enter Canada other than at a land or rail port of entry and is a person who is a citizen of the United States, a stateless habitual resident of the United States or an unaccompanied, unmarried minor without a parent or legal guardian in the US; or
- is a person whose presence in Canada is determined by the Minister of Public Safety and Emergency Preparedness or the Minister of Citizenship and Immigration to be in the national or public interest, while recognizing the paramount public health interests of Canada and Canadians.
 - More specifically, the Ministers exempt the following persons from the application of the OIC:
 - Foreign Nationals who make a claim for refugee protection at an air or marine port of entry and cannot be immediately directed back to the U.S..
 - Foreign Nationals who may be subject to the death penalty in any country.

Please refer to the notification process below for further case processing instructions.

Actions required by officers and Minister's Delegates (MDs) administering and enforcing the IRPA:

For all direct backs of foreign nationals making a claim for refugee protection at a designated POE (air or marine mode) or in-between the POEs, officers will be responsible to initiate and complete the following:

- Conduct queries in all applicable systems per existing procedures;
- Exam and Ref-Clm creation for quick intake in the Global Case Management System (GCMS);
- Collection of biometrics;
- BSF 505 – Direction to Return to USA and the officer will select "You are prohibited from entering Canada by an order or regulation made by the Governor in Council under the *Emergencies Act* or the *Quarantine Act*" on the form.

- Update the direct back screen in GCMS selecting the option "R41(d) – Emerg/Quarant Act" ;
- Notice to Transporter (BSF 502), as applicable;
- Notification of the direct-back to the USCBP using established local procedures;
- Detailed notes in the examination tab of GCMS; notes must indicate the POE or irregular crossing of arrival. This will allow the officers responsible for the resumption of processing to understand what method of processing applies. Ports of Entry must maintain a list of all direct backs; the list should reflect the information in the Direct Back screen in GCMS and include the UCI, client's status in the U.S., name(s) and current contact information (telephone number and/or email address) for each claimant.

Exception: A direct back should not be issued to FNs who are symptomatic and who arrive from the U.S. via commercial or public conveyance (air or marine mode). Those individuals should be directed to isolate and/or referred to PHAC (depending on the severity of their symptoms and whether there are concerns about their ability to isolate themselves). This does not apply to FNs who arrive from the U.S. in a personal conveyance (i.e., would not pose a risk to other travellers) - they can be directed back to the U.S.

Foreign Nationals who are able to enter to make a refugee claim as per subsection 5(1) or 5(2) of the OIC, can enter even if they are symptomatic and will need to be referred to the PHAC Quarantine officers regardless of mode or location of entry.

Claims for refugee protection will be subject to the following intake process:

1. Determine if the foreign national is symptomatic or asymptomatic as per the following instructions:

- COVID-19 – Enhanced Border Measures in Support of Mandatory Quarantine (asymptomatic travellers) and Isolation (symptomatic travellers) (All Modes)

2. Perform Secondary Examination

- Determine if they meet an exemption to the OIC and are permitted to make a claim;
- Conduct queries in all applicable systems per existing procedures;
- Initiate Refugee Claim in GCMS;
- Collect biometrics;
- Conduct a Preliminary Risk Assessment in order to assess eligibility and once the eligibility assessment is made the following outcomes will occur:

Claim assessed - Low Risk Case:

- i. The processing of FNs seeking entry from the U.S. who make a claim for refugee protection and are assessed to be 'low risk' and appear to meet an exemption or exception to the STCA.
- ii. Once the acknowledgement of claim process is completed, the claimant is permitted entry for further examination to complete the refugee intake processing (BSF536).

Claim assessed - High Risk/Complex Case:

- i. Completion by CBSA at the POE or other CBSA location once the acknowledgement of claim process is completed in consideration of appropriate conditions to ensure compliance;
- ii. Arrest and/or detention (A55) considerations are to be made using the Temporary Measures to Guide Decisions to Detain and Consideration of Alternatives to Detention.

Note: POE's are responsible for the resumption of claim processing as per regional procedures/processing models. Should a claimant request processing at another CBSA location, it is the responsibility of the initial POE to coordinate the resumption of processing with the claimants preferred processing location.

Should a POE decide to complete the refugee intake process at the time of arrival, all protocols to ensure the health and safety of officers and claimants must followed.

For claims assessed to be ineligible, removal orders will come into force as follows:

- i. **101(1)(e) STCA:** immediately [U.S. Removal - Air Mode R159.4(2)];
- ii. **Other grounds of ineligibility - non-STCA:** seven (7) days;
- iii. **101(1)(c.1):** seven (7) days with an expedited PRRA within 30 days by IRCC;
- iv. **101(1)(d):** seven (7) days with an expedited risk assessment for *non-refoulement* within 30 days; and
- v. **101(1)(f) cases:** suspend eligibility before referral to Refugee Protection Division to wait the outcome of an admissibility hearing or criminal court proceeding in Canada.

Note: Foreign Nationals determined ineligible under the STCA shall be ordered removed and returned to the U.S. immediately as per ss.48(2) of *IRPA*.

Post Claim Processing Procedures

Foreign Nationals who are permitted to make a claim for refugee protection in Canada while the OIC is in effect are subject to the same requirements as all other travellers as described in OIC 16. Officers are required to follow the process as described at the following link:

[COVID-19 – Enhanced Border Measures in Support of Mandatory Quarantine \(asymptomatic travellers\) and Isolation \(symptomatic travellers\) \(All Modes\)](#)

Transfer to Receiving Organizations

Upon completion of port of entry processing, should an individual require transportation and/or accommodations the following departments should be contacted based on whether the individual(s) are asymptomatic or symptomatic.

Asymptomatic Travellers - Immigration, Refugees and Citizenship Canada

| Geographic Area | Contact Name | Contact information (07:00 – 21:00) |
|--|--------------|--|
| Windsor & area | | |
| Lacolle & area | | |
| Lethbridge & area | | |
| Winnipeg & area | | |
| Surrey & area | | |
| Niagara Falls & area | | |
| All other areas or general inquiries | | |
| After Hours Contact (21:00 – 07:00) | | |

Symptomatic Travellers - Public Health Agency of Canada

PHAC Central Notification System
1-833-615-2384
phac.cns-snc.aspc@canada.ca

Notification Process

POEs are to notify CBSA Case Management of all foreign nationals who have made a claim for refugee protection including all those directed back or who qualify for an exception (STCA or under the *Quarantine Act* and the OIC). Case Management can be notified via email with the following subject line: "COVID-19 Response – asylum claimant UCI:11-XXXX-XXXX". The email should also indicate whether the claimants current contact information (telephone number,

address and/or email address) is on file for each claimant.

The above is in addition to any established regional notification processes.

Person(s) charged or convicted of an offence that is punishable by the death penalty

POEs must notify the [Border Operations Centre](#) immediately and prior to any decision or action is taken on a foreign national who has been charged with or convicted of an offence that is punishable by the death penalty, in the US or another country. The burden of proof is on the claimant to prove that they would be subject to the death penalty.

Return date for the direct back

Under general circumstances, direct backs normally include a specific date and time for the foreign national to return to the POE for further processing. For the duration of COVID-19 response, officers are required to provide the [Asylum handout COVID19](#) to all foreign nationals seeking refugee protection who are directed back. Officers will instruct all refugee claimants directed back to refer to the [CBSA website](#) for up to date information on when they should return to Canada. It is important that refugee claimants directed back are clearly counselled that this does not mean that their refugee claim will not be heard but rather that it is only delayed until such time as the OIC is lifted. Once the OIC has been lifted, arrangements will be made for the resumption of the refugee claim examination.

For greater clarity, these regulatory amendments do not impact any of the currently available recourse mechanisms with respect to immigration enforcement. They also do not impact individuals already granted protected person status under subsection 95(2) of the IRPA and seeking to re-enter Canada.

U.S. Interceptions and/or Returns to Canada

All persons seeking to make a claim for asylum in the U.S. and intercepted seeking entry at a place other than a POE, or entering at a U.S. POE, will be returned to the closest CBSA port office. The CBSA port of entry must accept the return of the foreign national; a case-by-case assessment by an officer should be completed and all available officer options can be considered when accepting the return of the person from U.S. authorities.

Once the border measures between Canada and the U.S. are lifted, the individual is to be contacted by U.S. authorities and advised to return to the U.S for further processing.

Additional Information:

- Arrest and/or detention (A55) considerations are to be made using the Temporary Measures to Guide Decisions to Detain and Consideration of Alternatives to Detention
- For further instructions on symptomatic or asymptomatic foreign nationals, please refer to the shift briefing Restricting the non-essential travel to Canada of U.S. citizens and other foreign nationals arriving from the United States by land, rail, ferry and maritime
- Contact information for Public Health Agency of Canada Quarantine Operations Centres can be found in Appendix B (Quarantine Operations Centres) of Enforcement Manual 4 (Port of Entry Examination).
- Additional guidance on liaising with the Public Health Agency of Canada is found in the People Processing Manual, Part 8, Chapter 5.2
- Additional guidance on POE processing can be found in ENF4 manual
- Additional guidance on writing A44(1) reports and Minister's Delegate review under A44(2) can be found in ENF5 and ENF6 manual, respectively.
- Operational Bulletin: PRG-2015-34 - Transportation of Non-detained Persons in Agency Vehicles while Administering CBSA Program Legislation

Regional Management:

Regional supervisors and managers will ensure that the above instructions are implemented immediately, and will be responsible for regional best practices and for conducting quality assurance.

Contact Information:

Any questions regarding this bulletin should be directed to the following email address:

Border Services Officers: If you have any questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the Traveller Operations Division's generic inbox: CBSA-

Approved by:

John Ommanney, Director General
 Travellers Branch

Christian Lorenz, Director General
 Intelligence and Enforcement Branch

Effective Date: Immediately

Updated: 2020-06-26

Additional bulletins: